

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5041 of 1989

With

CIVIL APPLICATION NO. 794 OF 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
Yes
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? : NO
No
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BALA JAYANT

Versus

A M C

Appearance:

MR MB BUCH for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

RULE SERVED for Respondent No. 2, 4

Mr. P.K. Shukla, Ld. AGP for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/06/2000

CAV JUDGEMENT

The petitioner above-named preferred this Special

Civil Application under provisions of the Bombay Town Planning & Urban Development Act, 1954 (hereinafter referred to as the said "Act") as well as under Article 14, 16, 226 and 300A of the Constitution of India; challenging the orders of the respondent Municipal Corporation.

2. The respondent No.1 is the Municipal Corporation constituted under the Bombay Provincial Municipal Corporation Act. The petitioner has contended in the petition that the petitioner has acquired the land bearing Survey No. 72, admeasuring 22 Gunthas situated at Vasna, District & Sub-District Ahmedabad, by registered document dated 12th June 1970 from one Mrs. Virbala Mulshanker Thaker. That the petitioner was granted permission to hold the said land by order of the City Deputy Collector, by order dated 12th June 1970. That, after finalisation of the Town Planning Scheme No. 26, the Certificate of Tenure and Title was also issued to that effect. Thereafter, the 2nd respondent wanted to acquire the said land for market purpose from the petitioner. The petitioner being duty bound by the order of the Estate Officer, Ahmedabad Municipal Corporation, handed over the said land to him w.e.f. 30th March 1978. That the respondents did not do anything with the said land for number of years, which was acquired from the petitioner for market purpose. Thenafter in year 1989 by a public advertisement published in the newspaper dated 26-2-1989, the said land was put to public auction at a premium fixed by the respondent authorities. That some portion of the land in question is to be used for the residential purpose also. The petitioner has challenged the aforesaid action of the respondents, stating that, the property was acquired for the market purpose which cannot be used for residential purpose and therefore, the entire action of the respondent Corporation is illegal and against the provisions of the said Act. The petitioner therefore challenged the aforesaid action on the part of the respondent Corporation by way of present petition, and has prayed for appropriate writ, order or direction, directing the respondent No.1 to revest the possession of Final Plot No. 123 in T.P. Scheme No. 26, which was acquired from the petitioner by the respondents No. 1, 2 and 3. The petitioner has also prayed for restraining the 4th respondent from putting up any construction on the land in question.

3. This petition was admitted. I have heard learned advocates for the parties and have perused the papers.

4. It has been mainly argued on behalf of the

petitioner that, the land has been acquired for the purpose of market and now it is being sued for residential purpose . That the change of user is not permissible and therefore the respondents should hand over possession of the said land back to the petitioner.

5. It appears that once the land has been acquired by an authority competent to do so, then it would not be necessary for the said authority to make use of the entire land for the purpose for which it was acquired. Even if there is change of user, the party from whom the land has been acquired, cannot claim it back on the ground that the land was acquired for one purpose and it has been used for another purpose.

6. On this point, we can refer to the decision of Hon'ble Supreme Court in C. PADMA AND OTHERS V. DY. SECRETARY TO THE GOVT. OF T.N. AND OTHERS, reported in (19970 2 SCC, 627. There it has been laid down that, when the acquired land having vested in the State and compensation is paid to the claimants, thereafter the claimants are not entitled to restitution of possession on the ground that, either the original public purpose had ceased to be in operation or the land could not be used for any other purpose.

7. In FORWARD CONSTRUCTION CO. AND OTHERS V. PRABHAT MANDAL (REGD) ANDHERI, reported in AIR 1986, S.C. 391, it has been observed that, when plot was allotted to the Corporation for construction of bus depot, and the Corporation resolved to construct the bus depot and market, said action of the Corporation was not held to be outside the purview of the Bombay Provincial Municipal Corporation Act, 1888. This decision further shows that the modification of plan is necessary only when user is completely changed.

In the present case the user has not been completely changed but it appears to have been only partially changed. Therefore this modification of plan cannot be said to be illegal in the facts & circumstances of the case, and in view of the principle laid down in the aforesaid decision.

8. Almost similar view has been taken in SHRI CHANDRAGAUDA RAMGONDA PATIL & ANR V. THE STATE OF MAHARASTRA & ORS, reported in J.T. 1996 (9) S.C. 258, wherein it has been laid down that, any land not utilised for public purpose is not intended to be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on date of

notification. Therefore the relief of restitution is not found to be available to the petitioner on that count.

9. In RUDRADHAR R. TRIVEDI V. STATE OF MAHARASHTRA AND ANOTHER, reported in AIR 1996 S.C. 3457, it has been laid down that, when the land has been acquired for one public purpose then it can be transferred for another public purpose, and the validity of acquisition cannot be assailed on the ground of such transfer.

10. So it is very clear that, when the land has been acquired for a particular purpose and if the said land has been used for the said purpose as well as for some other purpose also, then the acquisition cannot be challenged and restitution of the land cannot be claimed.

11. A question has arisen as to whether the respondent Corporation can permit construction of residential plots in the aforesaid land/area. Learned advocate for the Corporation has shown the Manual of the respondent Corporation. There it is clearly mentioned that, in a predominantly residential zone dwelling houses, flats, tenement buildings, chawls, public residential buildings etc. could be permitted to be constructed in such a zone.

12. It is therefore clear that, there is no evidence that the respondents have made complete change in the user and partial change in user is not impermissible. Under the aforesaid circumstances there is no merit in the petition. The action of the respondents cannot be treated to be illegal. The petitioner is not entitled to restitution of possession in view of the aforesaid facts & circumstances of the case. Consequently, there is no merit in the present petition and it deserves to be dismissed.

13. Present petition is accordingly ordered to be dismissed. Rule stands discharged. Interim relief stands vacated. Considering the facts & circumstances of the case, there shall be no order as to costs.

14. In view of the aforesaid decision in the petition, no order in the Civil Application and the same is accordingly disposed of.

Dt: 16-06-2000

(D.P. Buch, J)

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